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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JIMMIE EARL STEPHEN, Plaintiff, vs.) No. C 07-06379 JW (PR)) ORDER OF TRANSFER
R. HERNANDEZ, et al.,)
Defendant(s).	(Docket Nos. 2, 5, 9, 11 & 13)

Plaintiff, an inmate currently incarcerated at the California Men's Colony ("CMC") State Prison in San Luis Obispo, filed a <u>pro</u> se civil rights complaint pursuant to 42 U.S.C. § 1983, alleging that prison officials at R. J. Donovan Correctional Facility at Rock Mountain ("RJD") in San Diego, California, violated his constitutional rights under the First, Fifth and Fourteenth Amendments in the processing of various inmate appeals which plaintiff filed while housed at RJD.

Venue may be raised by the court *sua sponte* where the defendant has not filed a responsive pleading and the time for doing so has not run. See Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986). When jurisdiction is not founded solely on diversity, venue is proper in (1) the district in which any defendant resides, if all of the defendants reside in the same state; (2) the district in which a substantial

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United States District Court

For the Northern District of Californi

part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated; or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought. See 28 U.S.C. § 1391(b). When venue is improper, the district court has the discretion to either dismiss the case or transfer it "in the interest of justice." See 28 U.S.C. § 1406(a).

It is clear from the instant complaint and the attachments thereto that a substantial part of the events or omissions giving rise to plaintiff's claims arise out of actions alleged to have been committed at RJD by RJD officials. RJD is located in San Diego, California. San Diego is located within the venue of the Southern District of California. See 28 U.S.C. § 84(d). As a result, venue is proper in the Southern District of California, not in the Northern District.

Accordingly, in the interest of justice, the above-titled action is hereby TRANSFERRED to the United States District Court for the Southern District of California. In light of the transfer, this Court will defer to the Southern District with respect to plaintiff's motion for leave to proceed in forma pauperis (Docket No. 2), motion "to proceed by order as to imminent danger exception," (Docket No. 9), and motion to appoint counsel (Docket No. 13). Accordingly, the clerk shall terminate as moot Docket Nos. 2, 9 and 13 from this Court's docket.

For the reasons stated above, plaintiff's motions regarding venue (Docket Nos. 5 & 11) are DENIED to the extent he is requesting this Court to retain jurisdiction in this matter despite it being the improper venue.

The clerk shall transfer this matter and close the file.

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DATED:

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April 7, 2008

Inited States District Judge

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

JIMMIE STEPHEN,	Case Number: CV07-06379 JW
Plaintiff,	CERTIFICATE OF SERVICE
v.	
R. HERNANDEZ, et al.,	
Defendants.	_/
I, the undersigned, hereby certify that I am Court, Northern District of California.	an employee in the Office of the Clerk, U.S. District
That on 4/10/2008 attached, by placing said copy(ies) in a post hereinafter listed, by depositing said enveloan inter-office delivery receptacle located in	, I SERVED a true and correct copy(ies) of the tage paid envelope addressed to the person(s) ope in the U.S. Mail, or by placing said copy(ies) into the Clerk's office.
Jimmie Earl Stephen C56483 California Men's Colony State Prison P. O. Box 8101 San Luis Obispo, Ca 93409-8101	
Dated:	
/5/	Richard W. Wieking, Clerk By: Flizabeth Garcia, Deputy Clerk